

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Mailed: February 5, 2003

Cancellation No. 92032853

CONCHITA FOODS, INC.

v.

FRITAS ENCANTO DE MONTERREY,  
S.A. DE C.V

**Cheryl Goodman, Interlocutory Attorney:**

Answer was due on December 30, 2002. On January 13, 2003, petitioner filed a notice of default for failure of respondent to file an answer. On January 17, 2003, respondent filed a motion for leave to file a late answer and opposition to petitioner's motion for default judgment.

In support of its motion for default judgment, petitioner argues that answer was due on December 30, 2002; that respondent has not filed an answer; and therefore, default judgment should be entered against respondent.

In response to petitioner's motion, and in support of its motion for leave to file a late answer, respondent argues that it is based in Monterrey, Mexico; that the petition to cancel was never served directly on respondent but instead was served on the law firm of the former attorney who represented respondent more than four years

prior, that the law firm that received the petition to cancel attempted numerous times to reach respondent to forward the petition to cancel and/or to obtain authorization to represent respondent; that the petition to cancel was finally forwarded to respondent on December 24, 2002; that it was not until after December 30, 2002 that respondent authorized counsel that originally received the petition to cancel to represent it in this proceeding; that good cause exists for respondent's delay in filing an answer; that the delay was inadvertent; that petitioner will not be substantially prejudiced by the late answer; that respondent is prepared to defend this proceeding and assert meritorious defenses; and that public interest demands that cases and claims be decided on their merits.

When a respondent who has failed to timely file an answer to the petition to cancel, realizing that it is in default, files a motion for leave to file a late answer, the standard for determining whether default judgment should be entered is that of good cause. Fed. R. Civ. P. 55(c).

The circumstances set forth by respondent establish good cause. Moreover, the law favors deciding cases on their merits. Accordingly, the Board is reluctant to grant judgments of default for failure to file a timely answer and tends to resolve any doubts by setting aside default. See for example, *Paolo's Associates, Ltd., Partnership v. Boda*,

21 USPQ2d 1899 (Comm'r Pats. 1990). In view thereof, default is set aside and respondent's motion for leave to file a late answer is granted.

Respondent is allowed until FORTY DAYS from the mailing date of this order to file an answer to the petition to cancel.

Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE: **August 3, 2003**

30-day testimony period for party in position of plaintiff to close: **November 1, 2003**

30-day testimony period for party in position of defendant to close: **December 31, 2003**

15-day rebuttal testimony period for party in position of plaintiff to close: **February 14, 2004**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.